

For: FAS and FSA Employees and Contractors

FSA-297, "Certification for Stored Litigation Hold Documents"

Approved by: Deputy Administrator, Management



1 Dissemination of Litigation Certification

A Background

DR 3090-001, Litigation Retention Policy for Documentary Materials Including Electronically Stored Information (ESI), provides policies and responsibilities related to retaining record and nonrecord documentary materials. For discovery or other litigation-related purposes, FSA-297 was developed to assist the records staff and OGC when performing an agency search of litigation hold requests.

FSA implements a litigation hold when it must:

- suspend normal disposition actions (such as transfer, disposal, recycling, or destruction) for documentary materials
- segregate and preserve the materials because of legal, audit, or investigative needs.

Notes: It is important that each office, including its employees and contractors, that has documents pertaining to **any** litigation hold, take every reasonable step to preserve these documents.

The litigation hold **requires** that potentially responsive documentary materials be kept for longer periods of time than identified in the normal disposition guidance. Regardless of the normal retention period, records will remain frozen and **must** be preserved until further notice..

B Purpose

This notice:

- establishes requirements for certifying stored litigation hold documents
- provides guidance on completing FSA-297 (Exhibit 1).

Disposal Date	Distribution
September 1, 2014	All FAS and FSA employees and contractors; State Offices relay to County Offices

2 Guidance on Using FSA-297

A Frequency of Submitting FSA-297

All employees and contractors are **required** to complete FSA-297 when they receive a litigation hold notification. If employees or contractors have information about a case identified on the litigation hold notification, regardless of physical location, all documentary materials are **required** to be kept for as long as the litigation hold is in place.

If employees or contractors have information about a case:

- the litigation hold extends to:
 - documentary materials stored or maintained on Government resources
 - materials created on or stored in computers owned by employees and contractors
- Agency employees and contractors **must**:
 - search all paper documents and electronic data for documents potentially responsive to the subject matter of the litigation hold
 - **not** destroy written documents of any kind
 - retain electronically created and/or stored documents in their native format.

The litigation hold **requires** managers to preserve the relevant documentary materials and ESI of departing employees. When an employee retires or leaves the Agency, do **not** recycle or destroy the employee's files before ascertaining whether there exists any relevant material in their paper or computer files. If any relevant material is discovered, immediately contact the records staff.

B Return Completed FSA-297

FSA-297 is electronically fillable. E-mail completed FSA-297 to the records staff using the shared mailbox at **FSA.RecordsMgmt@wdc.usda.gov**.

C Filing Requirements

Hard copies of litigation holds, except for the ones related to the Keepseagle, Pigford I and II, and other discrimination-related class actions, are to be filed separately from administrative and program files. All litigation hold files are to be preserved and secured in a locked file drawer by the employee or contractor. File folders are to be labeled with the litigation hold case number.

2 Guidance on Using FSA-297 (Continued)

C Filing Requirements (Continued)

File folders are to be labeled and placed in the center of the subject file folder with the following information:

- litigation hold
- case number
- litigation hold date.

Example: Following is an example of a Litigation Hold subject file folder label.

GRS 1/30 File Code Jones, John Opened: 2007 (LEFT SIDE LABEL)	Litigation Hold FSA-2013-0045-John Jones v. USDA Litigation Hold Date: Jan 12, 2013 (CENTER LABEL)	Destroy no sooner than 4 years, but no later than 7 years after case is closed. (RIGHT SIDE LABEL)
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Note: FSA is currently under a blanket-wide records freeze for **all** administrative and program records. Records are to remain frozen regardless of whether or not the records are beyond their normal retention period. Therefore, all records **must** be preserved until further notice.

Electronic records should be saved using the case number and saved in a Microsoft Outlook e-mail folder.

3 Types of Searchable Documentary Materials

A Preserving Documentary Materials

For litigation holds, FSA has a legal obligation to preserve all **record** and **nonrecord** documentary materials related to the claims in a lawsuit. The law requires employees to preserve these materials in whatever form they were generated and maintained. Therefore, employees and contractors must continue to preserve the following:

- all administrative files that include, but are not limited to:
 - handbooks and notices
 - time and attendance sheets
 - travel and training files
 - correspondence files
 - meeting minutes

3 Types of Searchable Documentary Materials (Continued)

A Preserving Documentary Materials (Continued)

- all electronic data, even if it is a duplication of data stored somewhere else, including:
 - data “work tables”
 - data extracted from other databases
 - data sent to a centralized or shared database
 - data underlying summary reports
- any other documentary materials that are potentially relevant to the litigation hold.

Note: Nonrecord materials are Government-owned documentary materials that do **not** meet the statutory definition of records (44 U.S.C. 3301) or that have been excluded from coverage by the definition. Nonrecord materials expressly excluded from the statutory definition of records are:

- library and museum materials made or acquired and preserved solely for reference or exhibition purposes
- extra copies of documents kept only for convenience of reference
- stocks of publication and processed documents.

B Formats and Media Covered by the Litigation Hold

The duty to preserve documentary materials does **not** depend on the type of media on which the information exists. The materials may exist in various forms, including but not limited to, paper records, handwritten notes, memorandums documenting telephone calls, e-mails, and other electronic communication, word processing documents (including draft), spreadsheets, databases, calendars (including electronic calendars), electronic address books, personal data assistants (such as Palm Pilot and Blackberry), Internet usage files, system manuals, and network access information.

All ESI should be preserved in its “native” format (as it was originally created and maintained), along with its related “metadata”; that is the information about a particular data set that describes how, when, and by whom it was collected, created, accessed, or modified and how it is formatted.

Example: Although printing and archival copies of e-mails or Word documents may comply with the established record schedule, a litigation hold requiring the preservation of ESI would require that relevant e-mails or Word documents be saved in its original electronic format.

4 Records Staff Contacts

A Contacts

For questions about this notice, contact any of the following records staff employees:

- Keith Holden, FFAS Records Officer, by either of the following:
 - e-mail at **keith.holden@wdc.usda.gov**
 - telephone at 202-690-1560
- Angela Payton, Records Analyst, by either of the following:
 - e-mail at **angela.payton@wdc.usda.gov**
 - telephone at 202-720-0482
- Liz Ashton, Records Analyst, by either of the following:
 - e-mail at **liz.ashton@wdc.usda.gov**
 - telephone at 202-690-3739
- Sue Brazeal, Records Analyst, by either of the following:
 - e-mail at **sue.brazeal@kcc.usda.gov**
 - telephone at 816-926-2635.

Example of FSA-297

The following is an example of FSA-297.

This form is available electronically.		DOCUMENTS WILL BE ATTACHED.	
FSA-297 (08-09-13)		U.S. DEPARTMENT OF AGRICULTURE Farm Service Agency	
CERTIFICATION FOR STORED LITIGATION HOLD DOCUMENTS		FOR FSA RECORDS STAFF USE ONLY	
		A. LITIGATION HOLD NAME B. LITIGATION HOLD CASE NO.	
FSA must take reasonable steps to preserve such information in whatever form it has been created and maintained. Therefore this requires your assistance to both identify and preserve any and all information relating to the complaint, whether or not the information is ultimately discoverable. Accordingly, you are required to take the following steps: (1) Identify all such information and where it resides in Part C; and (2) Certify having received notification of this Litigation Hold and understanding and accepting your preservation obligations under this Litigation Hold in Part D.			
PART A - GENERAL INFORMATION			
1A. NAME John Doe		1B. OFFICE LOCATION 12345 Plainview lane Richmond, Virginia	
1C. EMAIL ADDRESS john.doe@wdc.usda.gov		1D. PHONE NO. (Including Area Code) 804-123-4567	
PART B - ACKNOWLEDGMENT OF LITIGATION HOLD DOCUMENT(S)			
Do you have any relevant document(s) relating to the attached litigation hold in any format? <input checked="" type="checkbox"/> YES (Complete Part C and D) <input type="checkbox"/> NO (no further action is required and complete Part D).			
NOTE: If additional documents are received and/or created after the initial submission of form FSA-297, relating to the attached litigation hold, contact the Records Office at FSA.RecordsMgmt@wdc.usda.gov . All documents shall be segregated and preserved until further notice from the Office of General Counsel.			
PART C - INDICATE AND IDENTIFY BY CHECKING ALL THAT APPLIES HOW RECORDS ARE STORED			
1. Volume of Records (Cubic feet)	2. Physical Location/Room No. (If applicable, indicate if records were sent to the Record Center)	3. Indicate How Records Are Stored (Check all that applies)	
		(a) Hard Copy	(b) Agency Systems
2	Suite 200	<input checked="" type="checkbox"/> Printed Email <input type="checkbox"/> Case Files/Logs <input checked="" type="checkbox"/> Calendar/ Appointment Books <input type="checkbox"/> Other:	<input type="checkbox"/> Email Messages. <input type="checkbox"/> Notes <input type="checkbox"/> PST Files (Archives) <input type="checkbox"/> Calendar Items <input type="checkbox"/> Public Folders <input type="checkbox"/> Office Communicator <input type="checkbox"/> Contact <input type="checkbox"/> Telephone Data (EvoIP) <input type="checkbox"/> Other:
		(c) Agency Systems – Network Data	(d) Agency Systems – Mobile
		<input type="checkbox"/> Personal Drive Documents/Files/ Folders <input checked="" type="checkbox"/> Shared Files/Folders <input type="checkbox"/> Other:	<input type="checkbox"/> Black Berry <input checked="" type="checkbox"/> Other: Tablet
		(e) Non-Network Data	(f) Personal Non-Network Data
		<input type="checkbox"/> Local "C" drive <input type="checkbox"/> Local "D" drive <input type="checkbox"/> Portable Media/ Thumb Drives <input type="checkbox"/> Deleted Items (Recycle Bin) <input type="checkbox"/> Other:	<input type="checkbox"/> Document/Files Folders <input type="checkbox"/> Internet <input type="checkbox"/> Email Messages <input type="checkbox"/> Portable Media/ Thumb Drives <input type="checkbox"/> PDAs <input type="checkbox"/> Other:

Example of FSA-297 (Continued)

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PART D - CERTIFICATION		
<p><i>I certify that I have received, understand, and accept my obligations to preserve any and all information (as defined above) I may have now, as well as such information I may subsequently receive, create or modify. I further understand and accept that my continuing litigation hold requires that I preserve all such information in "native" format, and conversely, that I NOT delete or destroy any such information until I receive formal written notice that this litigation hold is discontinued. To fulfill these continuing obligations, I will undertake the necessary steps to preserve this information, whether it is ESI, in coordination with OGC.</i></p>		
1A. TITLE	1B. SIGNATURE	1C. DATE SIGNED
For additional information contact: Keith Holden, Records Officer U.S. Department of Agriculture Farm Service Agency Management Services Division/Information Management Branch 1400 Independence Avenue, Room 5768-S STOP 0565 Washington, DC 20250 Work: (202) 690-1560 Fax: (202) 690-0115 Email: keith.holden@wdc.usda.gov		Return completed Certification to: FSA.RecordsMgmt@wdc.usda.gov
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